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95TH CONGRESS  
2D SESSION

# H. R. 7308

[Report No. 95-1283, Part I]

## IN THE HOUSE OF REPRESENTATIVES

MAY 18, 1977

Mr. RODINO introduced the following bill; which was referred to the Committee on the Judiciary

NOVEMBER 4, 1977

Rereferred jointly to the Committee on the Judiciary and the Permanent Select Committee on Intelligence

JUNE 8, 1978

Reported from the Permanent Select Committee on Intelligence with amendments, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

## A BILL

To amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 ~~That this Act may be cited as the "Foreign Intelligence Sur-~~  
4 ~~veillance Act of 1977".~~

5 ~~Sec. 2. Title 18, United States Code, is amended by~~  
6 ~~adding a new chapter after chapter 119 as follows:~~

1 ~~“Chapter 120.—ELECTRONIC SURVEILLANCE WITH-~~  
2 ~~IN THE UNITED STATES FOR FOREIGN INTEL-~~  
3 ~~LIGENCE PURPOSES~~

~~“Sec.~~

~~“2521. Definitions.~~

~~“2522. Authorization for electronic surveillance for foreign intelligence purposes.~~

~~“2523. Designation of judges authorized to grant orders for electronic surveillance.~~

~~“2524. Application for an order.~~

~~“2525. Issuance of an order.~~

~~“2526. Use of information.~~

~~“2527. Report of electronic surveillance.~~

4 ~~“§ 2521. Definitions~~

5 ~~“(a) Except as otherwise provided in this section the~~  
6 ~~definitions of section 2510 of this title shall apply to this~~  
7 ~~chapter.~~

8 ~~“(b) As used in this chapter—~~

9 ~~“(1) ‘Foreign power’ means—~~

10 ~~“(A) a foreign government or any component~~  
11 ~~thereof, whether or not recognized by the United~~  
12 ~~States;~~

13 ~~“(B) a faction of a foreign nation or nations,~~  
14 ~~not substantially composed of United States persons;~~

15 ~~“(C) an entity, which is openly acknowledged~~  
16 ~~by a foreign government or governments to be~~  
17 ~~directed and controlled by such foreign government~~  
18 ~~or governments;~~

19 ~~“(D) a foreign-based terrorist group;~~

20 ~~“(E) a foreign-based political organization,~~

1       ~~not substantially composed of United States persons;~~

2       ~~or~~

3       ~~“(F) an entity which is directed and con-~~  
4       ~~trolled by a foreign government or governments.~~

5       ~~“(2) ‘Agent of a foreign power’ means—~~

6       ~~“(A) any person, other than a United States~~  
7       ~~citizen or an alien lawfully admitted for permanent~~  
8       ~~residence (as defined in section 101 (a) (20) of the~~  
9       ~~Immigration and Nationality Act), who—~~

10       ~~“(i) is an officer or employee of a foreign~~  
11       ~~power;~~

12       ~~“(ii) knowingly engages in clandestine~~  
13       ~~intelligence activities for or on behalf of a for-~~  
14       ~~ign power under circumstances which indi-~~  
15       ~~cate that such activities would be harmful to~~  
16       ~~the security of the United States; or~~

17       ~~“(iii) conspires with or knowingly aids or~~  
18       ~~abets a person described in paragraph (ii)~~  
19       ~~above;~~

20       ~~“(B) any person who—~~

21       ~~“(i) knowingly engages in clandestine in-~~  
22       ~~telligence activities for or on behalf of a foreign~~  
23       ~~power, which activities involve or will involve~~  
24       ~~a violation of the criminal statutes of the United~~  
25       ~~States;~~

1           ~~"(ii) knowingly engages in activities that~~  
2           ~~involve or will involve sabotage or terrorism~~  
3           ~~for or on behalf of a foreign power;~~

4           ~~"(iii) pursuant to the direction of an in-~~  
5           ~~telligence service or intelligence network of a~~  
6           ~~foreign power, knowingly collects or transmits~~  
7           ~~information or material to an intelligence serv-~~  
8           ~~ice or intelligence network of a foreign power~~  
9           ~~in a manner intended to conceal the nature of~~  
10           ~~such information or material or the fact of such~~  
11           ~~transmission or collection, under circumstances~~  
12           ~~which indicate the transmission of such infor-~~  
13           ~~mation or material would be harmful to the~~  
14           ~~security of the United States, or that lack of~~  
15           ~~knowledge by the United States of such collec-~~  
16           ~~tion or transmission would be harmful to the~~  
17           ~~security of the United States; or~~

18           ~~"(iv) conspires with or knowingly aids or~~  
19           ~~abets any person engaged in activities described~~  
20           ~~in subsections B (i) through (iii) above.~~

21           ~~"(B) 'Terrorism' means activities which--~~

22           ~~"(A) are violent acts or acts dangerous to~~  
23           ~~human life which would be criminal under the laws~~  
24           ~~of the United States or of any State if committed~~  
25           ~~within its jurisdiction; and~~

5

1           ~~“(B) appear to be intended—~~

2                     ~~“(i) to intimidate or coerce the civilian~~  
3                     ~~population,~~

4                     ~~“(ii) to influence the policy of a govern-~~  
5                     ~~ment by intimidation or coercion, or~~

6                     ~~“(iii) to affect the conduct of a govern-~~  
7                     ~~ment by assassination or kidnapping.~~

8           ~~“(4) ‘Sabotage’ means activities which would be~~  
9           ~~prohibited by title 18, United States Code, chapter 105,~~  
10           ~~if committed against the United States.~~

11           ~~“(5) ‘Foreign intelligence information’ means—~~

12                     ~~“(A) information which relates to, and is~~  
13                     ~~deemed necessary to the ability of the United States~~  
14                     ~~to protect itself against, actual or potential attack or~~  
15                     ~~other grave hostile acts of a foreign power or an~~  
16                     ~~agent of a foreign power;~~

17                     ~~“(B) information with respect to a foreign~~  
18                     ~~power or foreign territory, which relates to, and~~  
19                     ~~because of its importance is deemed essential to—~~

20                     ~~“(i) the national defense or the security~~  
21                     ~~of the Nation; or—~~

22                     ~~“(ii) the successful conduct of the foreign~~  
23                     ~~affairs of the United States;~~

24                     ~~“(C) information which relates to, and is~~  
25                     ~~deemed necessary to the ability of the United States~~

1 ~~to protect against terrorism by a foreign power or~~  
2 ~~an agent of a foreign power;~~

3 ~~“(D) information which relates to, and is~~  
4 ~~deemed necessary to the ability of the United States~~  
5 ~~to protect against sabotage by a foreign power or~~  
6 ~~an agent of a foreign power;~~

7 ~~“(E) information which relates to, and is~~  
8 ~~deemed necessary to the ability of the United States~~  
9 ~~to protect against the clandestine intelligence activ-~~  
10 ~~ities of an intelligence service or network of a foreign~~  
11 ~~power or an agent of a foreign power.~~

12 ~~“(G) ‘Electronic surveillance’ means—~~

13 ~~“(A) the acquisition by an electronic, mechan-~~  
14 ~~ical, or other surveillance device of the contents of~~  
15 ~~any wire or radio communication sent by or in-~~  
16 ~~tended to be received by a particular, known United~~  
17 ~~States person who is in the United States, where~~  
18 ~~the contents are acquired by intentionally target-~~  
19 ~~ing that United States person, under circumstances~~  
20 ~~in which a person has a reasonable expectation of~~  
21 ~~privacy and a warrant would be required for law~~  
22 ~~enforcement purposes;~~

23 ~~“(B) the acquisition by an electronic, mechan-~~  
24 ~~ical, or other surveillance device, of the contents of~~  
25 ~~any wire communication to or from a person in the~~

1       ~~United States, without the consent of any party~~  
2       ~~thereto, where such acquisition occurs in the United~~  
3       ~~States while the communication is being transmitted~~  
4       ~~by wire;~~

5       ~~“(C) the intentional acquisition, by an elec-~~  
6       ~~tronic, mechanical, or other surveillance device, of~~  
7       ~~the contents of any radio communication, under~~  
8       ~~circumstances in which a person has a reasonable~~  
9       ~~expectation of privacy and a warrant would be~~  
10       ~~required for law enforcement purposes, and where~~  
11       ~~both the sender and all intended recipients are~~  
12       ~~located within the United States; or~~

13       ~~“(D) the installation or use of an electronic,~~  
14       ~~mechanical, or other surveillance device in the~~  
15       ~~United States for monitoring to acquire informa-~~  
16       ~~tion, other than from a wire or radio communication,~~  
17       ~~under circumstances in which a person has a reason-~~  
18       ~~able expectation of privacy and a warrant would be~~  
19       ~~required for law enforcement purposes.~~

20       ~~“(7) ‘Attorney General’ means the Attorney Gen-~~  
21       ~~eral of the United States (or Acting Attorney General~~  
22       ~~or an Assistant Attorney General specially designated~~  
23       ~~in writing by the Attorney General.~~

24       ~~“(8) ‘Minimization procedures’ means procedures~~  
25       ~~which are reasonably designed to minimize the acquisi-~~

1     ~~tion, retention, and dissemination of any information~~  
2     ~~concerning United States persons without their consent~~  
3     ~~that does not relate to the ability of the United States—~~

4             ~~“(A) to protect itself against actual or poten-~~  
5             ~~tial attack or other grave hostile acts of a foreign~~  
6             ~~power or an agent of a foreign power;~~

7             ~~“(B) to provide for the national defense or~~  
8             ~~security of the Nation;~~

9             ~~“(C) to provide for the conduct of the foreign~~  
10            ~~affairs of the United States;~~

11            ~~“(D) to protect against terrorism by a foreign~~  
12            ~~power or an agent of a foreign power;~~

13            ~~“(E) to protect against sabotage by a foreign~~  
14            ~~power or an agent of a foreign power; or~~

15            ~~“(F) to protect against the clandestine intelli-~~  
16            ~~gence activities of an intelligence service or net-~~  
17            ~~work of a foreign power or an agent of a foreign~~  
18            ~~power;~~

19     ~~and which are reasonably designed to insure that in-~~  
20     ~~formation which relates solely to the conduct of foreign~~  
21     ~~affairs shall not be maintained in such a manner as to~~  
22     ~~permit the retrieval of such information by reference to a~~  
23     ~~United States person, without his consent, who was a~~  
24     ~~party to a communication acquired pursuant to this~~



1 ~~chapter; and if the target of the electronic surveillance~~  
2 ~~is a foreign power which qualifies as such solely on the~~  
3 ~~basis that it is an entity controlled and directed by a~~  
4 ~~foreign government or governments, and unless there is~~  
5 ~~probable cause to believe that a substantial number of~~  
6 ~~the officers or executives of such entity are officers or~~  
7 ~~employees of a foreign government, or agents of a~~  
8 ~~foreign power as defined in section 2521 (b) (2) (B),~~  
9 ~~procedures which are reasonably designed to prevent the~~  
10 ~~acquisition, retention, and dissemination of communica-~~  
11 ~~tions of unconsenting United States persons who are not~~  
12 ~~officers or executives of such entity responsible for those~~  
13 ~~areas of its activities which involve foreign intelligence~~  
14 ~~information.~~

15 ~~“(9) ‘United States person’ means a citizen of the~~  
16 ~~United States, an alien lawfully admitted for permanent~~  
17 ~~residence (as defined in section 101 (a) (20) of the~~  
18 ~~Immigration and Nationality Act), an unincorporated~~  
19 ~~association a substantial number of members of which~~  
20 ~~are citizens of the United States or aliens lawfully ad-~~  
21 ~~mitted for permanent residence or a corporation which~~  
22 ~~is incorporated in the United States, but not including~~  
23 ~~corporations which are foreign powers.~~

24 ~~“(10) ‘United States’ when used in a geographic~~

1        ~~sense means all areas under the territorial sovereignty of~~  
2        ~~the United States, the Trust Territory of the Pacific~~  
3        ~~Islands, and the Canal Zone.~~

4        ~~“§ 2522. Authorization for electronic surveillance for for-~~  
5        ~~eign intelligence purposes~~

6        ~~“Applications for a court order under this chapter are~~  
7        ~~authorizing electronic surveillance under this chapter, such~~  
8        ~~powered the Attorney General to approve applications to~~  
9        ~~Federal judges having jurisdiction under section 2523 of this~~  
10       ~~chapter, and a judge to whom an application is made may~~  
11       ~~grant an order, in conformity with section 2525 of this~~  
12       ~~chapter, approving electronic surveillance of a foreign power~~  
13       ~~or an agent of a foreign power for the purpose of obtaining~~  
14       ~~foreign intelligence information.~~

15       ~~“§ 2523. Designation of judges authorized to grant orders~~  
16       ~~for electronic surveillance~~

17       ~~“(a) The Chief Justice of the United States shall public-~~  
18       ~~ly designate seven district court judges, each of whom shall~~  
19       ~~have jurisdiction to hear applications for and grant orders~~  
20       ~~approving electronic surveillance anywhere within the~~  
21       ~~United States under the procedures set forth in this chapter,~~  
22       ~~except that no judge designated under this subsection shall~~  
23       ~~have jurisdiction of the same application for electronic sur-~~  
24       ~~veillance under this chapter which has been denied pre-~~

1 ~~viously by another judge designated under this subsection.~~  
2 ~~If any judge so designated denies an application for an order~~  
3 ~~authorizing electronic surveillance under this chapter, such~~  
4 ~~judge shall provide immediately for the record a written~~  
5 ~~statement of each reason for his decision and, on motion of~~  
6 ~~the United States, the record shall be transmitted, under~~  
7 ~~seal, to the special court of review established in subsection~~  
8 ~~(b).~~

9     ~~“(b) The Chief Justice shall publicly designate three~~  
10 ~~judges, one of whom shall be publicly designated as the~~  
11 ~~presiding judge, from the United States district courts or~~  
12 ~~courts of appeals who together shall comprise a special~~  
13 ~~court of review which shall have jurisdiction to review the~~  
14 ~~denial of any application made under this chapter. If such~~  
15 ~~special court determines that the application was properly~~  
16 ~~denied, the special court shall immediately provide for the~~  
17 ~~record a written statement of each reason for its decision~~  
18 ~~and, on petition of the United States for a writ of certiorari,~~  
19 ~~the record shall be transmitted under seal to the Supreme~~  
20 ~~Court, which shall have jurisdiction to review such decision.~~

21     ~~“(c) Proceedings under this chapter shall be con-~~  
22 ~~ducted as expeditiously as possible. The record of proceed-~~  
23 ~~ings under this chapter, including applications made and~~  
24 ~~orders granted, shall be sealed and maintained under secu-~~

1 ~~rity measures established by the Chief Justice in consulta-~~  
2 ~~tion with the Attorney General and the Director of Central~~  
3 ~~Intelligence.~~

4 ~~"§ 2524. Application for an order~~

5 ~~"(a) Each application for an order approving elec-~~  
6 ~~tronic surveillance under this chapter shall be made by a~~  
7 ~~Federal officer in writing upon oath or affirmation to a judge~~  
8 ~~having jurisdiction under section 2523 of this chapter. Each~~  
9 ~~application shall require the approval of the Attorney Gen-~~  
10 ~~eral based upon his finding that it satisfies the criteria and~~  
11 ~~requirements of such application as set forth in this chapter.~~  
12 ~~It shall include the following information:~~

13 ~~"(1) the identity of the Federal officer making~~  
14 ~~the application;~~

15 ~~"(2) the authority conferred on the Attorney~~  
16 ~~General by the President of the United States and the~~  
17 ~~approval of the Attorney General to make the~~  
18 ~~application;~~

19 ~~"(3) the identity or a description of the target of~~  
20 ~~the electronic surveillance;~~

21 ~~"(4) a statement of the facts and circumstances~~  
22 ~~relied upon by the applicant to justify his belief that~~

23 ~~"(A) the target of the electronic surveillance~~  
24 ~~is a foreign power or an agent of a foreign power;~~

25 ~~and~~

1           ~~“(B) the facilities or the place at which the~~  
2           ~~electronic surveillance is directed are being used, or are~~  
3           ~~about to be used, by a foreign power or an agent of a~~  
4           ~~foreign power.~~

5           ~~“(5) a statement of the proposed minimization pro-~~  
6           ~~cedures;~~

7           ~~“(6) when the target of the surveillance is not a~~  
8           ~~foreign power as defined in section 2521 (b) (1)~~  
9           ~~(A), (B), or (C), a detailed description of the nature~~  
10          ~~of the information sought;~~

11          ~~“(7) a certification or certifications by the Assist-~~  
12          ~~ant to the President for National Security Affairs or an~~  
13          ~~executive branch official or officials designated by the~~  
14          ~~President from among those executive officers employed~~  
15          ~~in the area of national security or defense and appointed~~  
16          ~~by the President with the advice and consent of the~~  
17          ~~Senate—~~

18          ~~“(A) that the information sought is foreign~~  
19          ~~intelligence information;~~

20          ~~“(B) that the purpose of the surveillance is to~~  
21          ~~obtain foreign intelligence information;~~

22          ~~“(C) that such information cannot reasonably~~  
23          ~~be obtained by normal investigative techniques;~~

24          ~~“(D) including a designation of the type of~~  
25          ~~foreign intelligence information being sought ac-~~

1       ~~cording to the categories described in section 2521~~  
2       ~~(b) (5);~~

3       ~~“(E) when the target of the surveillance is~~  
4       ~~not a foreign power, as defined in section 2521 (b)~~  
5       ~~(1) (A), (B), or (C), including a statement of~~  
6       ~~the basis for the certification that—~~

7       ~~“(i) the information sought is the type of~~  
8       ~~foreign intelligence information designated; and~~

9       ~~“(ii) such information cannot reasonably~~  
10       ~~be obtained by normal investigative techniques;~~

11       ~~“(F) when the target of the surveillance is a~~  
12       ~~foreign power, as defined in section 2521 (b) (1)~~  
13       ~~(A), (B), or (C), stating the period of time for~~  
14       ~~which the surveillance is required to be maintained;~~

15       ~~“(8) when the target of the surveillance is not a~~  
16       ~~foreign power, as defined in section 2521 (b) (1) (A),~~  
17       ~~(B), or (C), a statement of the means by which the~~  
18       ~~surveillance will be effected, and when the target is~~  
19       ~~a foreign power, as defined in section 2521 (b) (1)~~  
20       ~~(A), (B), or (C), a designation of the type of elec-~~  
21       ~~tronic surveillance to be used according to the categories~~  
22       ~~described in section 2521 (b) (6);~~

23       ~~“(9) a statement of the facts concerning all pre-~~  
24       ~~vious applications that have been made to any judge~~  
25       ~~under this chapter involving any of the persons, facilities,~~

1 ~~or places specified in the application, and the action~~  
2 ~~taken on each previous application; and~~

3 ~~“(10) when the target of the surveillance is not~~  
4 ~~a foreign power, as defined in section 2521(b)(1)~~  
5 ~~(A), (B), or (C), a statement of the period of time~~  
6 ~~for which the electronic surveillance is required to be~~  
7 ~~maintained.~~

8 ~~If the nature of the intelligence gathering is such that the~~  
9 ~~approval of the use of electronic surveillance under this~~  
10 ~~chapter should not automatically terminate when the de-~~  
11 ~~scribed type of information has first been obtained, a descrip-~~  
12 ~~tion of facts supporting the belief that additional information~~  
13 ~~of the same type will be obtained thereafter.~~

14 ~~“(b) The Attorney General may require any other~~  
15 ~~affidavit or certification from any other officer in connection~~  
16 ~~with the application.~~

17 ~~“(c) The judge may require the applicant to furnish~~  
18 ~~such other information as may be necessary to make the~~  
19 ~~determinations required by section 2525 of this chapter.~~

20 ~~“§ 2525. Issuance of an order~~

21 ~~“(a) Upon an application made pursuant to section~~  
22 ~~2524 of this title, the judge shall enter an ex parte order as~~  
23 ~~requested or as modified approving the electronic surveil-~~  
24 ~~lance if he finds that—~~

25 ~~“(1) the President has authorized the Attorney~~

1     ~~General to approve applications for electronic surveil-~~  
2     ~~lance for foreign intelligence information;~~

3             ~~“(2) the application has been made by a Federal~~  
4     ~~officer and approved by the Attorney General;~~

5             ~~“(3) on the basis of the facts submitted by the~~  
6     ~~applicant there is probable cause to believe that --~~

7             ~~“(A) the target of the electronic surveillance is~~  
8     ~~a foreign power or an agent of a foreign power; and~~

9             ~~“(B) the facilities or place at which the elec-~~  
10     ~~tronic surveillance is directed are being used, or~~  
11     ~~are about to be used, by a foreign power or an agent~~  
12     ~~of a foreign power;~~

13             ~~“(4) the proposed minimization procedures meet~~  
14     ~~the definition of minimization procedures under section~~  
15     ~~2521 (b) (8) of this title;~~

16             ~~“(5) the application which has been filed contains~~  
17     ~~the description and certification or certifications, speci-~~  
18     ~~fied in section 2524 (a) (7) and, if the target is a United~~  
19     ~~States person, the certification or certifications are not~~  
20     ~~clearly erroneous on the basis of the statement made~~  
21     ~~under section 2524 (a) (7) (E).~~

22             ~~“(b) An order approving an electronic surveillance~~  
23     ~~under this section shall --~~

24             ~~“(1) specify --~~



1           ~~"(A) the identity or a description of the target~~  
2           ~~of the electronic surveillance;~~

3           ~~"(B) the nature and location of the facilities or~~  
4           ~~the place at which the electronic surveillance will be~~  
5           ~~directed;~~

6           ~~"(C) the type of information sought to be~~  
7           ~~acquired;~~

8           ~~"(D) when the target of the surveillance is not~~  
9           ~~a foreign power, as defined in section 2521 (b) (1)~~  
10           ~~(A), (B), or (C), the means by which the elec-~~  
11           ~~tronic surveillance will be effected, and when the~~  
12           ~~target is a foreign power, as defined in section 2521~~  
13           ~~(b) (1) (A), (B), or (C), a designation of the~~  
14           ~~type of electronic surveillance to be used according~~  
15           ~~to the categories described in section 2521 (b) (6);~~  
16           ~~and~~

17           ~~"(E) the period of time during which the elec-~~  
18           ~~tronic surveillance is approved; and~~

19           ~~"(2) direct--~~

20           ~~"(A) that the minimization procedures be~~  
21           ~~followed;~~

22           ~~"(B) that, upon the request of the applicant, a~~  
23           ~~specified communication or other common carrier,~~  
24           ~~landlord, custodian, contractor, or other specified~~

1        ~~person furnish the applicant forthwith any and all~~  
2        ~~information, facilities, or technical assistance, neces-~~  
3        ~~sary to accomplish the electronic surveillance in~~  
4        ~~such manner as will protect its secrecy and produce~~  
5        ~~a minimum of interference with the services that~~  
6        ~~such carrier, landlord, custodian, contractor, or~~  
7        ~~other person is providing that target of electronic~~  
8        ~~surveillance;~~

9        ~~“(C) that such carrier, landlord, custodian, or~~  
10       ~~other person maintain under security procedures~~  
11       ~~approved by the Attorney General and the Director~~  
12       ~~of Central Intelligence any records concerning the~~  
13       ~~surveillance or the aid furnished which such person~~  
14       ~~wishes to retain;~~

15       ~~“(D) that the applicant compensate, at the~~  
16       ~~prevailing rate, such carrier, landlord, custodian, or~~  
17       ~~other person for furnishing such aid.~~

18       ~~“(c) An order issued under this section may approve~~  
19       ~~an electronic surveillance not targeted against a foreign~~  
20       ~~power, as defined in section 2521 (b) (1) (A), (B), or~~  
21       ~~(C), for the period necessary to achieve its purpose, or for~~  
22       ~~ninety days, whichever is less; an order under this section~~  
23       ~~shall approve an electronic surveillance targeted against a~~  
24       ~~foreign power, as defined in section 2521 (b) (1) (A), (B),~~  
25       ~~or (C) for the period specified in the certification required~~

1 ~~in section 2524 (a) (7) (F), or for one year, whichever is~~  
2 ~~less. Extensions of an order issued under this chapter may~~  
3 ~~be granted on the same basis as an original order upon an~~  
4 ~~application for an extension made in the same manner as~~  
5 ~~required for an original application and after new findings~~  
6 ~~required by subsection (a) of this section. In connection~~  
7 ~~with applications for extensions where the target is not a~~  
8 ~~foreign power, as defined in section 2521 (b) (1) (A),~~  
9 ~~(B), or (C), the judge may require the applicant to submit~~  
10 ~~information, obtained pursuant to the original order or to~~  
11 ~~any previous extensions, as may be necessary to make new~~  
12 ~~findings of probable cause.~~

13 ~~“(d) Notwithstanding any other provision of this chap-~~  
14 ~~ter when the Attorney General reasonably determines that--~~

15 ~~“(1) an emergency situation exists with respect to~~  
16 ~~the employment of electronic surveillance to obtain for-~~  
17 ~~eign intelligence information before an order authorizing~~  
18 ~~such surveillance can with due diligence be obtained, and~~

19 ~~“(2) the factual basis for issuance of an order~~  
20 ~~under this chapter to approve such surveillance exists,~~  
21 ~~he may authorize the emergency employment of electronic~~  
22 ~~surveillance if a judge designated pursuant to section 2523~~  
23 ~~of this chapter is informed by the Attorney General or his~~  
24 ~~designate at the time of such authorization that the decision~~  
25 ~~has been made to employ emergency electronic surveillance~~

~~1 and if an application in accordance with this chapter is~~  
~~2 made to that judge as soon as practicable, but not more than~~  
~~3 twenty-four hours after the Attorney General authorizes~~  
~~4 such acquisition. If the Attorney General authorizes such~~  
~~5 emergency employment of electronic surveillance, he shall~~  
~~6 require that the minimization procedures required by this~~  
~~7 chapter for the issuance of a judicial order be followed. In~~  
~~8 the absence of a judicial order approving such electronic~~  
~~9 surveillance, the surveillance shall terminate when the infor-~~  
~~10 mation sought is obtained, when the application for the~~  
~~11 order is denied, or after the expiration of twenty-four hours~~  
~~12 from the time of authorization by the Attorney General,~~  
~~13 whichever is earliest. In the event that such application for~~  
~~14 approval is denied, or in any other case where the electronic~~  
~~15 surveillance is terminated without an order having been~~  
~~16 issued, no information obtained or evidence derived from~~  
~~17 such surveillance shall be received in evidence or otherwise~~  
~~18 disclosed in any trial, hearing or other proceeding in or~~  
~~19 before any court, grand jury, department, office, agency,~~  
~~20 regulatory body, legislative committee or other authority~~  
~~21 of the United States, a State or political subdivision thereof.~~  
~~22 A denial of the application made under this subsection may~~  
~~23 be reviewed as provided in section 2523.~~

~~24 "§ 2526. Use of information~~

~~25 "(a) Information concerning United States persons~~

1 ~~acquired from an electronic surveillance conducted pursuant~~  
2 ~~to this chapter may be used and disclosed by Federal officers~~  
3 ~~and employees without the consent of the United States~~  
4 ~~person only for purposes specified in section 2521 (b) (8)~~  
5 ~~(A) through (F), or for the enforcement of the criminal~~  
6 ~~law if its use outweighs the possible harm to the national~~  
7 ~~security. No otherwise privileged communication obtained~~  
8 ~~in accordance with, or in violation of, the provisions of this~~  
9 ~~chapter shall lose its privileged character.~~

10 ~~“(b) The minimization procedures required under this~~  
11 ~~chapter shall not preclude the retention and disclosure, for~~  
12 ~~law enforcement purposes, of any information which con-~~  
13 ~~stitutes evidence of a crime if such disclosure is accompanied~~  
14 ~~by a statement that such evidence, or any information~~  
15 ~~derived therefrom, may only be used in a criminal proceed-~~  
16 ~~ing with the advance authorization of the Attorney General.~~

17 ~~“(c) Whenever the Government intends to enter into~~  
18 ~~evidence or otherwise use or disclose in any trial, hearing,~~  
19 ~~or other proceeding in or before any court, department, officer,~~  
20 ~~agency, or other authority of the United States, any informa-~~  
21 ~~tion obtained or derived from an electronic surveillance, the~~  
22 ~~Government shall prior to the trial, hearing, or other proceed-~~  
23 ~~ing or at a reasonable time prior to an effort to so disclose~~  
24 ~~or so use the information or submit it in evidence notify the~~  
25 ~~court in which the information is to be disclosed or used or,~~

~~1 if the information is to be disclosed or used in or before  
2 another authority, shall notify a court in the district wherein  
3 the information is to be so disclosed or so used that the Gov-  
4 ernment intends to so disclose or so use such information.  
5 Whenever any court is so notified, or whenever a motion is  
6 made pursuant to section 3504 of this title, or any other  
7 statute or rule of the United States to suppress evidence on  
8 the grounds that it was obtained or derived from an unlawful  
9 electronic surveillance, the court, or where the motion is  
10 made before another authority, a court in the same district  
11 as the authority, shall notwithstanding any other law, if the  
12 Government by affidavit asserts that an adversary hearing  
13 would harm the national security or the foreign affairs of the  
14 United States, review in camera and ex parte the applica-  
15 tion, order, and so much of the transcript of the surveillance  
16 as may be necessary to determine whether the surveillance  
17 was authorized and conducted in a manner that did not vio-  
18 late any right afforded by the Constitution and statutes of  
19 the United States to the person aggrieved: *Provided, That,*  
20 *in making this determination, the court shall disclose to the*  
21 *aggrieved person portions of the application, order, or tran-*  
22 *script only where such disclosure is necessary for an accurate*  
23 *determination of the legality of the surveillance. If the court*  
24 *determines that the electronic surveillance of the person ag-*  
25 *grieved was not lawfully authorized or conducted, the court*~~

1 ~~shall in accordance with the requirements of law suppress~~  
2 ~~that information which was obtained or evidence derived un-~~  
3 ~~lawfully from the electronic surveillance of the person~~  
4 ~~aggrieved.~~

5 ~~“(d) If an emergency employment of the electronic~~  
6 ~~surveillance is authorized under section 2525 (d) and a sub-~~  
7 ~~sequent order approving the surveillance is not obtained,~~  
8 ~~the judge shall cause to be served on any United States per-~~  
9 ~~son named in the application and on such other United States~~  
10 ~~persons subject to electronic surveillance as the judge may~~  
11 ~~determine in his discretion it is in the interest of justice to~~  
12 ~~serve, notice of—~~

13 ~~“(1) the fact of the application;~~

14 ~~“(2) the period of the surveillance; and~~

15 ~~“(3) the fact that during the period information~~  
16 ~~was or was not obtained.~~

17 ~~On an ex parte showing of good cause to the judge the serv-~~  
18 ~~ing of the notice required by this subsection may be post-~~  
19 ~~poned or suspended for a period not to exceed ninety days.~~  
20 ~~Thereafter, on a further ex parte showing of good cause, the~~  
21 ~~court shall forego ordering the serving of the notice required~~  
22 ~~under this subsection.~~

23 **~~“§ 2527. Report of electronic surveillance~~**

24 ~~“In April of each year, the Attorney General shall re-~~  
25 ~~port to the Administrative Office of the United States Courts~~

1 ~~and shall transmit to Congress with respect to the preceding~~  
2 ~~calendar year—~~

3 ~~“(1) the total number of applications made for~~  
4 ~~orders and extensions of orders approving electronic~~  
5 ~~surveillance; and~~

6 ~~“(2) the total number of such orders and extensions~~  
7 ~~either granted, modified, or denied.”.~~

8 ~~SEC. 3. The provisions of this Act and the amendment~~  
9 ~~made hereby shall become effective upon enactment: *Pro-*~~  
10 ~~*vided*, That, any electronic surveillance approved by the~~  
11 ~~Attorney General to gather foreign intelligence information~~  
12 ~~shall not be deemed unlawful for failure to follow the proce-~~  
13 ~~dures of chapter 120, title 18, United States Code, if that~~  
14 ~~surveillance is terminated or an order approving that sur-~~  
15 ~~veillance is obtained under this chapter within ninety days~~  
16 ~~following the designation of the first judge pursuant to section~~  
17 ~~2523 of chapter 120, title 18, United States Code.~~

18 ~~SEC. 4. Chapter 110 of title 18, United States Code, is~~  
19 ~~amended as follows:—~~

20 ~~(a) Section 2511 (1) is amended—~~

21 ~~(1) by inserting “or chapter 120 or with respect~~  
22 ~~to techniques used by law enforcement officers not~~  
23 ~~involving the interception of wire or oral communica-~~  
24 ~~tions as otherwise authorized by a search warrant or~~



1 ~~order of a court of competent jurisdiction," immediately~~  
2 ~~after "chapter" in the first sentence;~~

3 ~~(2) by inserting a comma and "or, under color of~~  
4 ~~law, willfully engages in any other form of electronic~~  
5 ~~surveillance as defined in chapter 120" immediately~~  
6 ~~before the semicolon in paragraph (a);~~

7 ~~(3) by inserting "or information obtained under~~  
8 ~~color of law by any other form of electronic surveillance~~  
9 ~~as defined in chapter 120" immediately after "contents~~  
10 ~~of any wire or oral communication" in paragraph (c);~~

11 ~~(4) by inserting "or any other form of electronic~~  
12 ~~surveillance, as defined in chapter 120," immediately~~  
13 ~~before "in violation" in paragraph (c);~~

14 ~~(5) by inserting "or information obtained under~~  
15 ~~color of law by any other form of electronic surveillance~~  
16 ~~as defined in chapter 120" immediately after "any wire~~  
17 ~~or oral communication" in paragraph (d); and~~

18 ~~(6) by inserting "or any other form of electronic~~  
19 ~~surveillance, as defined in chapter 120," immediately~~  
20 ~~before "in violation" in paragraph (d).~~

21 ~~(b) (1) Section 2511 (2) (a) (i) is amended by insert-~~  
22 ~~ing the words "or radio communication" after the words~~  
23 ~~"wire communication" and by inserting the words "or other-~~  
24 ~~wise acquire" after the word "intercept",~~

1       ~~(2) Section 2511 (2) (a) (ii) is amended by inserting~~  
2 ~~the words "or chapter 120" after the second appearance of~~  
3 ~~the word "chapter", and by striking the period at the end~~  
4 ~~thereof and adding the following: "or engage in electronic~~  
5 ~~surveillance, as defined in chapter 120: *Provided, however,*~~  
6 ~~That before the information, facilities, or technical assistance~~  
7 ~~may be provided, the investigative or law enforcement~~  
8 ~~officer shall furnish to the officer, employee, or agent of the~~  
9 ~~carrier either—~~

10           ~~"(1) an order signed by the authorizing judge~~  
11 ~~certifying that a court order directing such assistance~~  
12 ~~has been issued; or~~

13           ~~"(2) in the case of an emergency interception or~~  
14 ~~electronic surveillance as provided for in section 2518~~  
15 ~~(7) of this chapter or section 2525 (d) of chapter 120,~~  
16 ~~a certification under oath by investigative or law en-~~  
17 ~~forcement officer that the applicable statutory require-~~  
18 ~~ments have been met,~~

19 ~~and setting forth the period of time for which the electronic~~  
20 ~~surveillance is authorized and describing the facilities from~~  
21 ~~which the communication is to be acquired. Any violation~~  
22 ~~of this subsection by a communication common carrier or~~  
23 ~~an officer, employee, or agency thereof, shall render the~~  
24 ~~carrier liable for the civil damages provided for in section~~  
25 ~~2520."~~

1       ~~(c) (1) Section 2511 (2) (b) is amended by inserting~~  
2       ~~the words "or otherwise engage in electronic surveillance,~~  
3       ~~as defined in chapter 120," after the word "radio".~~

4       ~~(2) Section 2511 (2) (c) is amended by inserting the~~  
5       ~~words "or engage in electronic surveillance, as defined in~~  
6       ~~chapter 120," after the words "oral communication" and~~  
7       ~~by inserting the words "or such surveillance" after the last~~  
8       ~~word in the paragraph and before the period.~~

9       ~~(3) Section 2511 (2) is amended by adding at the~~  
10       ~~end of the section the following provisions:~~

11       ~~"(e) Notwithstanding any other provision of this title~~  
12       ~~or sections 605 or 606 of the Communications Act of 1934,~~  
13       ~~it shall not be unlawful for an officer, employee, or agent~~  
14       ~~of the United States in the normal course of his official duty~~  
15       ~~to conduct electronic surveillance as defined in section 2521~~  
16       ~~(b) (6) of chapter 120 without a court order for the sole~~  
17       ~~purpose of—~~

18       ~~"(i) testing the capability of electronic equipment,~~  
19       ~~provided that the test period shall be limited in extent~~  
20       ~~and duration to that necessary to determine the capabil-~~  
21       ~~ity of the equipment, that the content of any communi-~~  
22       ~~cation acquired under this paragraph shall be retained~~  
23       ~~and used only for the purpose of determining the capa-~~  
24       ~~bility of such equipment, shall be disclosed only to the~~  
25       ~~persons conducting the test, and shall be destroyed upon~~

1       ~~completion of the testing, and that the test may exceed~~  
2       ~~ninety days only with the prior approval of the Attor-~~  
3       ~~ney General; or~~

4           ~~(ii) determining the existence and capability of~~  
5       ~~electronic surveillance equipment being used unlawfully:~~  
6       ~~*Provided, That* such electronic surveillance shall be lim-~~  
7       ~~ited in extent and duration to that necessary to determine~~  
8       ~~the existence and capability of such equipment, and that~~  
9       ~~any information acquired by such surveillance shall be~~  
10       ~~used only to enforce this chapter or section 605 of the~~  
11       ~~Communications Act of 1934 or to protect information~~  
12       ~~from unlawful electronic surveillance.~~

13       ~~“(f) Nothing contained in this chapter, or section 605~~  
14       ~~of the Communications Act of 1934 (47 U.S.C. 605) shall~~  
15       ~~be deemed to affect the acquisition by the United States~~  
16       ~~Government of foreign intelligence information from inter-~~  
17       ~~national communications by a means other than electronic~~  
18       ~~surveillance as defined in section 2521 (b) (6) of this title;~~  
19       ~~and the procedures in this chapter and chapter 120 of this~~  
20       ~~title, shall be the exclusive means by which electronic surveil-~~  
21       ~~lance, as defined in section 2521 (b) (6) of chapter 120, and~~  
22       ~~the interception of domestic wire and oral communications~~  
23       ~~may be conducted.”.~~

24       ~~(d) Section 2511 (3) is repealed.~~

1       (e) Section 2515 is amended by inserting the words "or  
2   electronic surveillance, as defined in chapter 120, has been  
3   conducted" after the word "intercepted", by inserting the  
4   words "or other information obtained from electronic surveil-  
5   lance, as defined in chapter 120," after the second appearance  
6   of the word "communication", and by inserting "or chapter  
7   120" after the final appearance of the word "chapter".

8       (f) Section 2518 (1) is amended by inserting the words  
9   "under this chapter" after the word "communication".

10      (g) Section 2518 (4) is amended by inserting the words  
11   "under this chapter" after both appearances of the words  
12   "wire or oral communication".

13      (h) Section 2518 (9) is amended by striking the word  
14   "intercepted" and inserting the words "intercepted pursuant  
15   tion has been intercepted, or about whom information has

16      (i) Section 2519 (3) is amended by inserting the words  
17   "pursuant to this chapter" after the words "wire or oral  
18   communications" and after the words "granted or denied".

19      (j) Section 2520 is amended by deleting all before sub-  
20   section (2) and inserting in lieu thereof: "Any person other  
21   than a foreign power or an agent of a foreign power as  
22   defined in sections 2521 (b) (1) and 2521 (b) (2) (A) of  
23   chapter 120, who has been subject to electronic surveillance,  
24   as defined in chapter 120, or whose wire or oral communica-

1 ~~tion has been intercepted, or about whom information has~~  
2 ~~been disclosed or used, in violation of this chapter, shall (1)~~  
3 ~~have a civil cause of action against any person who so acted~~  
4 ~~in violation of this chapter and”.~~

5 *That this Act may be cited as the “Foreign Intelligence*  
6 *Surveillance Act of 1978”.*

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7 *TITLE I—ELECTRONIC SURVEILLANCE WITH-*  
8 *IN THE UNITED STATES FOR FOREIGN*  
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10 *DEFINITIONS*

11 *SEC. 101. As used in this title:*

12 *(a) “Foreign power” means—*

13 *(1) a foreign government or any component*  
14 *thereof, whether or not recognized by the United*  
15 *States;*

1           (2) *a faction of a foreign nation or nations, not*  
2           *substantially composed of United States persons;*

3           (3) *an entity that is openly acknowledged by a*  
4           *foreign government or governments to be directed*  
5           *and controlled by such foreign government or*  
6           *governments;*

7           (4) *a group engaged in international terrorism*  
8           *or activities in preparation therefor;*

9           (5) *a foreign-based political organization, not*  
10          *substantially composed of United States persons; or*

11          (6) *an entity that is directed and controlled by*  
12          *a foreign government or governments.*

13          (b) *“Agent of a foreign power” means—*

14               (1) *any person other than a United States per-*  
15               *son, who—*

16                       (A) *acts in the United States as an officer,*  
17                       *member, or employee of a foreign power; or*

18                       (B) *acts for or on behalf of a foreign pow-*  
19                       *er which engages in clandestine intelligence ac-*  
20                       *tivities in the United States contrary to the inter-*  
21                       *ests of the United States, when the circumstances*  
22                       *of such person's presence in the United States*  
23                       *indicate that such person may engage in such*  
24                       *activities in the United States, or when such per-*  
25                       *son knowingly aids or abets any person in the*

1           *conduct of such activities or knowingly con-*  
2           *spires with any person to engage in such activi-*  
3           *ties; or*

4           *(2) any person who—*

5                 *(A) knowingly engages in clandestine intel-*  
6                 *ligence gathering activities for or on behalf of*  
7                 *a foreign power, which activities involve or may*  
8                 *involve a violation of the criminal statutes of*  
9                 *the United States;*

10                *(B) pursuant to the direction of an intel-*  
11                *ligence service or network of a foreign power,*  
12                *knowingly engages in any other clandestine intel-*  
13                *ligence activities for or on behalf of such foreign*  
14                *power, which activities involve or are about to*  
15                *involve a violation of the criminal statutes of*  
16                *the United States;*

17                *(C) knowingly engages in sabotage or*  
18                *international terrorism, or activities that are in*  
19                *preparation therefor, for or on behalf of a*  
20                *foreign power; or*

21                *(D) knowingly aids or abets any person in*  
22                *the conduct of activities described in subpara-*  
23                *graph (A), (B), or (C) or knowingly con-*  
24                *spires with any person to engage in activities*  
25                *described in subparagraph (A), (B), or (C).*



1           (c) *"International terrorism" means activities that—*

2                 (1) *involve violent acts or acts dangerous to hu-*  
3 *man life that are or may be a violation of the crim-*  
4 *inal laws of the United States or of any State, or*  
5 *that might involve a criminal violation if committed*  
6 *within the jurisdiction of the United States or any*  
7 *State;*

8                 (2) *appear to be intended—*

9                     (A) *to intimidate or coerce a civilian*  
10 *population;*

11                    (B) *to influence the policy of a govern-*  
12 *ment by intimidation or coercion; or*

13                    (C) *to affect the conduct of a government*  
14 *by assassination or kidnapping; and*

15                 (3) *occur totally outside the United States, or*  
16 *transcend national boundaries in terms of the means*  
17 *by which they are accomplished, the persons they*  
18 *appear intended to coerce or intimidate, or the locale*  
19 *in which their perpetrators operate or seek asylum.*

20           (d) *"Sabotage" means activities that involve or may*  
21 *involve a violation of chapter 105 of title 18, United*  
22 *States Code, or that might involve such a violation if*  
23 *committed against the United States.*

24           (e) *"Foreign intelligence information" means—*

25                 (1) *information that relates to and, if concern-*

1        *ing a United States person, is necessary to the ability*  
2        *of the United States to protect against—*

3                *(A) actual or potential attack or other*  
4                *grave hostile acts of a foreign power or an*  
5                *agent of a foreign power;*

6                *(B) sabotage or international terrorism*  
7                *by a foreign power or an agent of a foreign*  
8                *power; or*

9                *(C) clandestine intelligence activities by an*  
10               *intelligence service or network of a foreign*  
11               *power or by an agent of a foreign power; or*

12               *(2) information with respect to a foreign power*  
13               *or foreign territory that relates to and, if concern-*  
14               *ing a United States person, is necessary to—*

15               *(A) the national defense or the security of*  
16               *the United States; or*

17               *(B) the conduct of the foreign affairs of*  
18               *the United States.*

19        *(f) "Electronic surveillance" means—*

20               *(1) the acquisition by an electronic, me-*  
21               *chanical, or other surveillance device of the contents*  
22               *of any wire or radio communication sent by or*  
23               *intended to be received by a particular, known*  
24               *United States person who is in the United States,*  
25               *if the contents are acquired by intentionally target-*

1        *ing that United States person, under circumstances*  
2        *in which a person has a reasonable expectation of*  
3        *privacy and a warrant would be required for law*  
4        *enforcement purposes;*

5                *(2) the acquisition by an electronic, mechan-*  
6        *ical, or other surveillance device of the contents of*  
7        *any wire communication to or from a person in the*  
8        *United States, without the consent of any party*  
9        *thereto, if such acquisition occurs in the United*  
10       *States;*

11               *(3) the intentional acquisition by an electronic,*  
12       *mechanical, or other surveillance device of the con-*  
13       *tents of any radio communication, under circum-*  
14       *stances in which a person has a reasonable expecta-*  
15       *tion of privacy and a warrant would be required for*  
16       *law enforcement purposes, and if both the sender and*  
17       *all intended recipients are located within the United*  
18       *States; or*

19               *(4) the installation or use of an electronic, me-*  
20       *chanical, or other surveillance device in the United*  
21       *States for monitoring to acquire information, other*  
22       *than from a wire or radio communication, under*  
23       *circumstances in which a person has a reasonable*  
24       *expectation of privacy and a warrant would be re-*  
25       *quired for law enforcement purposes.*

1           (g) *"Attorney General" means the Attorney Gen-*  
2           *eral of the United States (or Acting Attorney General)*  
3           *or the Deputy Attorney General.*

4           (h) *"Minimization procedures", with respect to*  
5           *electronic surveillance, means—*

6                   (1) *specific procedures, which shall be adopted*  
7                   *by the Attorney General, that are reasonably de-*  
8                   *signed in light of the purpose and technique of the*  
9                   *particular surveillance, to minimize the acquisition,*  
10                  *retention, and dissemination of nonpublicly avail-*  
11                  *able information concerning unconsenting United*  
12                  *States persons consistent with the need of the United*  
13                  *States to obtain, produce, and disseminate foreign*  
14                  *intelligence information;*

15                  (2) *procedures that require that nonpublicly*  
16                  *available information, which is not foreign intelli-*  
17                  *gence information, as defined in subsection (e) (1),*  
18                  *shall not be disseminated in a manner that identifies*  
19                  *any individual United States person, without such*  
20                  *person's consent, unless such person's identity is*  
21                  *necessary to understand foreign intelligence informa-*  
22                  *tion or assess its importance;*

23                  (3) *notwithstanding paragraphs (1) and (2),*  
24                  *procedures that allow for the retention and dissemi-*

1        *nation of information that is evidence of a crime*  
2        *which has been, is being, or is about to be committed*  
3        *and that is to be retained or disseminated for the*  
4        *purpose of preventing the crime or enforcing the*  
5        *criminal law; and*

6                *(4) notwithstanding paragraphs (1), (2), and*  
7        *(3), with respect to any electronic surveillance ap-*  
8        *proved pursuant to section 102(a), procedures that*  
9        *require that no contents of any communication to*  
10       *which a United States person is a party shall be*  
11       *disclosed, disseminated, or used for any purpose or*  
12       *retained for longer than twenty-four hours unless a*  
13       *court order under section 105 is obtained or unless*  
14       *the Attorney General determines that the informa-*  
15       *tion may indicate a threat of death or serious bodily*  
16       *harm to any person.*

17                *(i) "United States person" means a citizen of the*  
18       *United States, an alien lawfully admitted for permanent*  
19       *residence (as defined in section 101(a)(20) of the*  
20       *Immigration and Nationality Act), an unincorporated*  
21       *association a substantial number of members of which*  
22       *are citizens of the United States or aliens lawfully ad-*  
23       *mitted for permanent residence, or a corporation which*  
24       *is incorporated in the United States, but does not include*

1       *a corporation or an association which is a foreign power,*  
2       *as defined in subsection (a) (1), (2), or (3).*

3       *(j) "United States", when used in a geographic*  
4       *sense, means all areas under the territorial sovereignty*  
5       *of the United States and the Trust Territory of the*  
6       *Pacific Islands.*

7       *(k) "Aggrieved person" means a person who is the*  
8       *target of an electronic surveillance or any other person*  
9       *whose communications or activities were subject to elec-*  
10       *tronic surveillance.*

11       *(l) "Wire communication" means any communica-*  
12       *tion while it is being carried by a wire, cable, or other*  
13       *like connection furnished or operated by any person*  
14       *engaged as a common carrier in providing or operating*  
15       *such facilities for the transmission of interstate or foreign*  
16       *communications.*

17       *(m) "Person" means any individual, including any*  
18       *officer or employee of the Federal Government, or any*  
19       *group, entity, association, corporation, or foreign power.*

20       *(n) "Contents", when used with respect to a com-*  
21       *munication, includes any information concerning the*  
22       *identity of the parties to such communication or the*  
23       *existence, substance, purport, or meaning of that com-*  
24       *munication.*

1     *AUTHORIZATION FOR ELECTRONIC SURVEILLANCE FOR*  
2                     *FOREIGN INTELLIGENCE PURPOSES*

3         *SEC. 102. (a)(1) Notwithstanding any other law, the*  
4     *President, through the Attorney General, may authorize*  
5     *electronic surveillance without a court order under this title*  
6     *to acquire foreign intelligence information for periods of*  
7     *up to one year if the Attorney General certifies in writing*  
8     *under oath that—*

9             *(A) the electronic surveillance is solely directed*  
10         *at—*

11                 *(i) communications exclusively between or*  
12             *among foreign powers, as defined in section 101*  
13             *(a) (1), (2), or (3); or*

14                 *(ii) the acquisition of technical intelligence from*  
15             *property or premises under the open and exclusive*  
16             *control of a foreign power, as defined in section*  
17             *101(a) (1), (2), or (3); and*

18             *(B) the proposed minimization procedures with*  
19             *respect to such surveillance meet the definition of mini-*  
20             *mization procedures under section 101(h); and*  
21     *if the Attorney General shall report such minimization pro-*  
22     *cedures and any changes thereto to the House Permanent*  
23     *Select Committee on Intelligence and the Senate Select Com-*  
24     *mittee on Intelligence at least thirty days prior to their*

1 *effective date, unless the Attorney General determines im-*  
2 *mediate action is required and notifies the committees im-*  
3 *mediately of such minimization procedures and the reason*  
4 *for their becoming effective immediately.*

5       (2) *An electronic surveillance authorized by this sub-*  
6 *section may be conducted only in accordance with the At-*  
7 *torney General's certification and the minimization proce-*  
8 *dures adopted by him.*

9       (3) *With respect to electronic surveillance authorized*  
10 *by this subsection, the Attorney General may direct a speci-*  
11 *fied communication common carrier to—*

12           (A) *furnish all information, facilities, or technical*  
13 *assistance necessary to accomplish the electronic surveil-*  
14 *lance in such a manner as will protect its secrecy and*  
15 *produce a minimum of interference with the services*  
16 *that such carrier is providing its customers; and*

17           (B) *maintain under security procedures approved*  
18 *by the Attorney General and the Director of Central*  
19 *Intelligence any records concerning the surveillance*  
20 *or the aid furnished which such carrier wishes to*  
21 *retain.*

22 *The Government shall compensate, at the prevailing rate,*  
23 *such carrier for furnishing such aid.*

24       (b) *Applications for a court order under this title are*  
25 *authorized if the President has, by written authorization,*



1 *empowered the Attorney General to approve applications to*  
2 *the Special Court having jurisdiction under section 103, and*  
3 *a judge to whom an application is made may, notwithstanding*  
4 *any other law, grant an order, in conformity with*  
5 *section 105, approving electronic surveillance of a foreign*  
6 *power or an agent of a foreign power for the purpose of*  
7 *obtaining foreign intelligence information, except that the*  
8 *Special Court shall not have jurisdiction to grant any order*  
9 *approving electronic surveillance directed solely as described*  
10 *in paragraph (1)(A) of subsection (a) unless such surveil-*  
11 *lance may involve the acquisition of communications of any*  
12 *United States person.*

13 *SPECIAL COURTS*

14 *SEC. 103. (a) There is established a Special Court*  
15 *of the United States with jurisdiction throughout the United*  
16 *States to carry out the judicial duties of this title. The Chief*  
17 *Justice of the United States shall publicly designate at least*  
18 *one judge from each of the judicial circuits, nominated by*  
19 *the chief judges of the respective circuits, who shall be*  
20 *members of the Special Court and one of whom the Chief*  
21 *Justice shall publicly designate as the chief judge. The Special*  
22 *Court shall sit continuously in the District of Columbia.*

23 *(b) There is established a Special Court of Appeals*  
24 *with jurisdiction to hear appeals from decisions of the Special*  
25 *Court and any other matter assigned to it by this title. The*

1 *Chief Justice shall publicly designate six judges, one of*  
2 *whom shall be publicly designated as the chief judge, from*  
3 *among judges nominated by the chief judges of the district*  
4 *courts of the District of Columbia, the Eastern District of*  
5 *Virginia and the District of Maryland, and the United*  
6 *States Court of Appeals for the District of Columbia, any*  
7 *three of whom shall constitute a panel for purposes of carry-*  
8 *ing out its duties under this title.*

9       (c) *The judges of the Special Court and the Special*  
10 *Court of Appeals shall be designated for six-year terms, ex-*  
11 *cept that the Chief Justice shall stagger the terms of the*  
12 *members originally chosen. No judge may serve more than*  
13 *two full terms.*

14       (d) *The chief judges of the Special Court and the*  
15 *Special Court of Appeals shall, in consultation with the*  
16 *Attorney General and the Director of Central Intelligence,*  
17 *establish such document, physical, personnel, or communi-*  
18 *cations security measures as are necessary to protect infor-*  
19 *mation submitted to or produced by the Special Court or*  
20 *Special Court of Appeals from unauthorized disclosure.*

21       (e) *Proceedings under this title shall be conducted as*  
22 *expeditiously as possible. If any application to the Special*  
23 *Court is denied, the court shall record the reasons for that*  
24 *denial, and the reasons for that denial shall, upon the motion*

1 *of the party to whom the application was denied, be trans-*  
2 *mitted under seal to the Special Court of Appeals.*

3 *(f) Decisions of the Special Court of Appeals shall be*  
4 *subject to review by the Supreme Court of the United States*  
5 *in the same manner as a judgment of a United States court*  
6 *of appeals as provided in section 1254 of title 28, United*  
7 *States Code, except that the Supreme Court may adopt*  
8 *special procedures with respect to security appropriate to*  
9 *the case.*

10 *(g) The Chief Judges of the Special Court and the*  
11 *Special Court of Appeals may, in consultation with the*  
12 *Attorney General and Director of Central Intelligence and*  
13 *consistent with subsection (d)—*

14 *(1) designate such officers or employees of the Gov-*  
15 *ernment, as may be necessary, to serve as employees of*  
16 *the Special Court and Special Court of Appeals; and*

17 *(2) promulgate such rules or administrative pro-*  
18 *cedures as may be necessary to the efficient functioning*  
19 *of the Special Court and Special Court of Appeals.*

20 *Any funds necessary to the operation of the Special Court*  
21 *and the Special Court of Appeals may be drawn from*  
22 *appropriations for the Department of Justice. The Depart-*  
23 *ment of Justice shall provide such fiscal and administrative*

1 *services as may be necessary for the Special Court and Spe-*  
2 *cial Court of Appeals.*

3 *APPLICATION FOR AN ORDER*

4 *SEC. 104. (a) Each application for an order approving*  
5 *electronic surveillance under this title shall be made by a*  
6 *Federal officer in writing upon oath or affirmation to a judge*  
7 *having jurisdiction under section 103. Each application*  
8 *shall require the approval of the Attorney General based*  
9 *upon his finding that it satisfies the criteria and require-*  
10 *ments of such application as set forth in this title. It shall*  
11 *include—*

12 *(1) the identity of the Federal officer making the*  
13 *application;*

14 *(2) the authority conferred on the Attorney General*  
15 *by the President of the United States and the approval*  
16 *of the Attorney General to make the application;*

17 *(3) the identity, if known, or a description of the*  
18 *target of the electronic surveillance;*

19 *(4) a statement of the facts and circumstances*  
20 *relied upon by the applicant to justify his belief that—*

21 *(A) the target of the electronic surveillance is a*  
22 *foreign power or an agent of a foreign power; and*

23 *(B) each of the facilities or places at which the*  
24 *electronic surveillance is directed is being used, or is*

1           *about to be used, by a foreign power or an agent of*  
2           *a foreign power;*

3           *(5) a statement of the proposed minimization pro-*  
4           *cedures;*

5           *(6) a detailed description of the nature of the*  
6           *information sought and the type of communications or*  
7           *activities to be subjected to the surveillance;*

8           *(7) a certification or certifications by the Assistant*  
9           *to the President for National Security Affairs or an*  
10           *executive branch official or officials designated by the*  
11           *President from among those executive officers employed*  
12           *in the area of national security or defense and appointed*  
13           *by the President with the advice and consent of the*  
14           *Senate—*

15           *(A) that the certifying official deems the infor-*  
16           *mation sought to be foreign intelligence information;*

17           *(B) that the purpose of the surveillance is to*  
18           *obtain foreign intelligence information;*

19           *(C) that such information cannot reasonably*  
20           *be obtained by normal investigative techniques;*

21           *(D) that designates the type of foreign intelli-*  
22           *gence information being sought according to the*  
23           *categories described in section 101(e); and*

1           (E) including a statement of the basis for the  
2           certification that—

3                 (i) the information sought is the type of  
4                 foreign intelligence information designated; and

5                 (ii) such information cannot reasonably  
6                 be obtained by normal investigative techniques;

7           (8) a statement of the means by which the surveil-  
8           lance will be effected;

9           (9) a statement of the facts concerning all previous  
10          applications that have been made to any judge under  
11          this title involving any of the persons, facilities, or places  
12          specified in the application, and the action taken on  
13          each previous application;

14          (10) a statement of the period of time for which  
15          the electronic surveillance is required to be maintained,  
16          and if the nature of the intelligence gathering is such  
17          that the approval of the use of electronic surveillance  
18          under this title should not automatically terminate when  
19          the described type of information has first been obtained,  
20          a description of facts supporting the belief that additional  
21          information of the same type will be obtained there-  
22          after; and

23          (11) whenever more than one electronic, mechan-  
24          ical or other surveillance device is to be used with respect  
25          to a particular proposed electronic surveillance, the cov-

1 *erage of the devices involved and what minimization*  
2 *procedures apply to information acquired by each*  
3 *device.*

4        (b) *Whenever the target of the electronic surveillance is*  
5 *a foreign power, as defined in section 101(a) (1), (2), or*  
6 *(3), and each of the facilities or places at which the surveil-*  
7 *lance is directed is owned, leased, or exclusively used by that*  
8 *foreign power, the application need not contain the informa-*  
9 *tion required by paragraphs (6), (7)(E), (8), and (11)*  
10 *of subsection (a), but shall contain such information about*  
11 *the surveillance techniques and communications or other in-*  
12 *formation concerning United States persons likely to be ob-*  
13 *tained as may be necessary to assess the proposed minimiza-*  
14 *tion procedures.*

15       (c) The Attorney General may require any other  
16 affidavit or certification from any other officer in connection  
17 with the application.

18           (d) The judge may require the applicant to furnish such  
19 other information as may be necessary to make the determina-  
20 tions required by section 105.

## ISSUANCE OF AN ORDER

22        *SEC. 105. (a) Upon an application made pursuant*  
23        *to section 104, the judge shall enter an ex parte order as*  
24        *requested or as modified approving the electronic surveillance*  
25        *if he finds that—*

1           (1) the President has authorized the Attorney  
2           General to approve applications for electronic surveil-  
3           lance for foreign intelligence information;

4           (2) the application has been made by a Federal  
5           officer and approved by the Attorney General;

6           (3) on the basis of the facts submitted by the  
7           applicant there is probable cause to believe that—

8                   (A) the target of the electronic surveillance is  
9                   a foreign power or an agent of a foreign power:  
10                  Provided, That no United States person may be  
11                  considered a foreign power or an agent of a foreign  
12                  power solely upon the basis of activities protected  
13                  by the first amendment to the Constitution of the  
14                  United States; and

15                   (B) each of the facilities or places at which the  
16                  electronic surveillance is directed is being used, or  
17                  is about to be used, by a foreign power or an agent  
18                  of a foreign power;

19           (4) the proposed minimization procedures meet the  
20           definition of minimization procedures under section 101  
21           (h); and

22           (5) the application which has been filed contains  
23           all statements and certifications required by section 104  
24           and, if the target is a United States person, the certifi-  
25           cation or certifications are not clearly erroneous on the



1     *basis of the statement made under section 104(a)(7)*  
2     *(E) and any other information furnished under section*  
3     *104(d).*

4     *(b) An order approving an electronic surveillance un-*  
5     *der this section shall—*

6         *(1) specify—*

7             *(A) the identity, if known, or a description of*  
8             *the target of the electronic surveillance;*

9             *(B) the nature and location of each of the*  
10            *facilities or places at which the electronic surveil-*  
11            *lance will be directed;*

12            *(C) the type of information sought to be ac-*  
13            *quired and the type of communications or activi-*  
14            *ties to be subjected to the surveillance;*

15            *(D) the means by which the electronic surveil-*  
16            *lance will be effected;*

17            *(E) the period of time during which the elec-*  
18            *tronic surveillance is approved; and*

19            *(F) whenever more than one electronic, me-*  
20            *chanical, or other surveillance device is to be used*  
21            *under the order, the authorized coverage of the de-*  
22            *vices involved and what minimization procedures*  
23            *shall apply to information subject to acquisition by*  
24            *each device; and*

25         *(2) direct—*

1           (A) that the minimization procedures be fol-  
2           lowed;

3           (B) that, upon the request of the applicant,  
4           a specified communication or other common carrier,  
5           landlord, custodian, or other specified person furnish  
6           the applicant forthwith any and all information,  
7           facilities, or technical assistance necessary to ac-  
8           complish the electronic surveillance in such man-  
9           ner as will protect its secrecy and produce a mini-  
10          mum of interference with the services that such  
11          carrier, landlord, custodian, or other person is  
12          providing that target of electronic surveillance;

13          (C) that such carrier, landlord, custodian, or  
14          other person maintain under security procedures  
15          approved by the Attorney General and the Director  
16          of Central Intelligence any records concerning the  
17          surveillance or the aid furnished that such person  
18          wishes to retain; and

19          (D) that the applicant compensate, at the pre-  
20          vailing rate, such carrier, landlord, custodian, or  
21          other person for furnishing such aid.

22          (c) Whenever the target of the electronic surveillance  
23          is a foreign power, as defined in section 101(a) (1), (2),  
24          or (3), and each of the facilities or places at which the sur-  
25          veillance is directed is owned, leased, or exclusively used

1 *by that foreign power, the order need not contain the infor-*  
2 *mation required by subparagraphs (C), (D), and (F)*  
3 *of subsection (b) (1), but shall generally describe the informa-*  
4 *tion sought, the communications or activities to be subjected*  
5 *to the surveillance, and the type of electronic surveillance*  
6 *involved, including whether physical entry is required.*

7 *(d) (1) An order issued under this section may approve*  
8 *an electronic surveillance for the period necessary to achieve*  
9 *its purpose, or for ninety days, whichever is less, except that*  
10 *an order under this section shall approve an electronic sur-*  
11 *veillance targeted against a foreign power, as defined in*  
12 *section 101(a) (1), (2), or (3), for the period specified*  
13 *in the application or for one year, whichever is less.*

14 *(2) Extensions of an order issued under this title may*  
15 *be granted on the same basis as an original order upon an*  
16 *application for an extension and new findings made in the*  
17 *same manner as required for an original order, except that an*  
18 *extension of an order under this chapter for a surveillance*  
19 *targeted against a foreign power, as defined in section 101*  
20 *(a) (4), (5), or (6), may be for a period not to exceed one*  
21 *year if the judge finds probable cause to believe that no*  
22 *communication of any individual United States person will*  
23 *be acquired during the period.*

24 *(3) At the end of the period of time for which electronic*  
25 *surveillance is approved by an order or an extension, the*

1 judge may assess compliance with the minimization proce-  
2 dures by reviewing the circumstances under which informa-  
3 tion concerning United States persons was acquired, re-  
4 tained, or disseminated.

5 (e) Notwithstanding any other provision of this title,  
6 when the Attorney General reasonably determines that—

7 (1) an emergency situation exists with respect to the  
8 employment of electronic surveillance to obtain foreign  
9 intelligence information before an order authorizing  
10 such surveillance can with due diligence be obtained; and

11 (2) the factual basis for issuance of an order under  
12 this title to approve such surveillance exists;

13 he may authorize the emergency employment of electronic  
14 surveillance if a judge designated pursuant to section 103  
15 is informed by the Attorney General or his designee at the  
16 time of such authorization that the decision has been made  
17 to employ emergency electronic surveillance and if an appli-  
18 cation in accordance with this title is made to that judge as  
19 soon as practicable, but not more than twenty-four hours  
20 after the Attorney General authorizes such surveillance. If  
21 the Attorney General authorizes such emergency employment  
22 of electronic surveillance, he shall require that the minimiza-  
23 tion procedures required by this title for the issuance of a  
24 judicial order be followed. In the absence of a judicial order  
25 approving such electronic surveillance, the surveillance shall

1 terminate when the information sought is obtained, when  
2 the application for the order is denied, or after the expiration  
3 of twenty-four hours from the time of authorization by the  
4 Attorney General, whichever is earliest. In the event that  
5 such application for approval is denied, or in any other case  
6 where the electronic surveillance is terminated and no order  
7 is issued approving the surveillance, no information obtained  
8 or evidence derived from such surveillance shall be received  
9 in evidence or otherwise disclosed in any trial, hearing, or  
10 other proceeding in or before any court, grand jury, depart-  
11 ment, office, agency, regulatory body, legislative committee,  
12 or other authority of the United States, a State, or political  
13 subdivision thereof, and no information concerning any  
14 United States person acquired from such surveillance shall  
15 subsequently be used or disclosed in any other manner by  
16 Federal officers or employees without the consent of such  
17 person, except with the approval of the Attorney General if  
18 the information may indicate a threat of death or serious  
19 bodily harm to any person. A denial of the application made  
20 under this subsection may be reviewed as provided in section  
21 103.

22 (f) Notwithstanding any other provision of this title,  
23 officers, employees, or agents of the United States are au-  
24 thorized in the normal course of their official duties to conduct  
25 electronic surveillance not targeted against the communica-

1    *tions of any particular person or persons, under procedures*  
2    *approved by the Attorney General, solely to—*

3            *(1) test the capability of electronic equipment, if—*

4                    *(A) it is not reasonable to obtain the consent of*  
5                    *the persons incidentally subjected to the surveillance;*

6                    *(B) the test is limited in extent and duration*  
7                    *to that necessary to determine the capability of the*  
8                    *equipment; and*

9                    *(C) the contents of any communication ac-*  
10                   *quired are retained and used only for the purpose*  
11                   *of determining the capability of the equipment, are*  
12                   *disclosed only to test personnel, and are destroyed*  
13                   *before or immediately upon completion of the test;*

14                  *(2) determine the existence and capability of elec-*  
15                  *tronic surveillance equipment being used by persons not*  
16                  *authorized to conduct electronic surveillance, if—*

17                    *(A) it is not reasonable to obtain the consent of*  
18                    *persons incidentally subjected to the surveillance;*

19                    *(B) such electronic surveillance is limited in*  
20                    *extent and duration to that necessary to determine the*  
21                    *existence and capability of such equipment; and*

22                    *(C) any information acquired by such surveil-*  
23                    *lance is used only to enforce chapter 119 of title 18,*  
24                    *United States Code, or section 605 of the Com-*  
25                    *munications Act of 1934, or to protect information*

1           *from unauthorized surveillance; or*

2           *(3) train intelligence personnel in the use of elec-*  
3           *tronic surveillance equipment, if—*

4           *(A) it is not reasonable to—*

5           *(i) obtain the consent of the persons in-*  
6           *cientally subjected to the surveillance;*

7           *(ii) train persons in the course of surveil-*  
8           *lances otherwise authorized by this title; or*

9           *(iii) train persons in the use of such equip-*  
10          *ment without engaging in electronic surveillance;*

11          *(B) such electronic surveillance is limited in*  
12          *extent and duration to that necessary to train the*  
13          *personnel in the use of the equipment; and*

14          *(C) no contents of any communication ac-*  
15          *quired are retained or disseminated for any purpose,*  
16          *but are destroyed as soon as reasonably possible.*

17          *(g) Certifications made by the Attorney General pur-*  
18          *suant to section 102(a) and applications made and orders*  
19          *granted under this title shall be retained in accordance with*  
20          *the security procedures established pursuant to section 103*  
21          *for a period of at least ten years from the date of the*  
22          *application.*

23                           *USE OF INFORMATION*

24          *SEC. 106. (a) Information acquired from an electronic*  
25          *surveillance conducted pursuant to this title concerning any*

1 *United States person may be used and disclosed by Federal*  
2 *officers and employees without the consent of the United*  
3 *States person only in accordance with the minimization*  
4 *procedures required by this title. No otherwise privileged*  
5 *communication obtained in accordance with, or in viola-*  
6 *tion of, the provisions of this title shall lose its privileged*  
7 *character. No information acquired from an electronic sur-*  
8 *veillance pursuant to this title may be used or disclosed by*  
9 *Federal officers or employees except for lawful purposes.*

10 *(b) No information acquired pursuant to this title shall*  
11 *be disclosed for law enforcement purposes unless such dis-*  
12 *closure is accompanied by a statement that such information,*  
13 *or any information derived therefrom, may only be used in*  
14 *a criminal proceeding with the advance authorization of the*  
15 *Attorney General.*

16 *(c) Whenever the Government intends to enter into*  
17 *evidence or otherwise use or disclose in any trial, hearing,*  
18 *or other proceeding in or before any court, department,*  
19 *officer, agency, regulatory body, or other authority of the*  
20 *United States, against an aggrieved person, any information*  
21 *obtained or derived from an electronic surveillance of that*  
22 *aggrieved person pursuant to the authority of this title, the*  
23 *Government shall, prior to the trial, hearing, or other*  
24 *proceeding or at a reasonable time prior to an effort to*  
25 *so disclose or so use that information or submit it in evidence,*



1 *notify the aggrieved person and the court or other authority*  
2 *in which the information is to be disclosed or used that the*  
3 *Government intends to so disclose or so use such information.*

4       *(d) Whenever any State or political subdivision there-*  
5 *of intends to enter into evidence or otherwise use or dis-*  
6 *close in any trial, hearing, or other proceeding in or before*  
7 *any court, department, officer, agency, regulatory body, or*  
8 *other authority of a State or a political subdivision thereof,*  
9 *against an aggrieved person any information obtained or*  
10 *derived from an electronic surveillance of that aggrieved*  
11 *person pursuant to the authority of this title, the State or*  
12 *political subdivision thereof shall notify the aggrieved person,*  
13 *the court or other authority in which the information is to*  
14 *be disclosed or used, and the Attorney General that the State*  
15 *or political subdivision thereof intends to so disclose or so*  
16 *use such information.*

17       *(e) Any person against whom evidence obtained or*  
18 *derived from an electronic surveillance to which he is an*  
19 *aggrieved person is to be, or has been, introduced or other-*  
20 *wise used or disclosed in any trial, hearing, or other pro-*  
21 *ceeding in or before any court, department, officer, agency,*  
22 *regulatory body, or other authority of the United States, a*  
23 *State, or a political subdivision thereof, may move to sup-*  
24 *press the evidence obtained or derived from such electronic*  
25 *surveillance on the grounds that—*

1           (1) the information was unlawfully acquired; or  
2           (2) the surveillance was not made in conformity  
3           with an order of authorization or approval.

4   Such a motion shall be made before the trial, hearing, or  
5   other proceeding unless there was no opportunity to make  
6   such a motion or the person was not aware of the grounds of  
7   the motion.

8           (f) Whenever a court or other authority is notified  
9   pursuant to subsection (c) or (d), or whenever a motion is  
10   made pursuant to subsection (e) and the Government con-  
11   cedes that information obtained or derived from an elec-  
12   tronic surveillance pursuant to the authority of this title  
13   as to which the moving party is an aggrieved person is to  
14   be, or has been, introduced or otherwise used or disclosed  
15   in any trial, hearing, or other proceeding, the Government  
16   may make a motion before the Special Court to determine  
17   the lawfulness of the electronic surveillance. Unless all the  
18   judges of the Special Court are so disqualified, the motion  
19   may not be heard by a judge who granted or denied an or-  
20   der or extension involving the surveillance at issue. Such  
21   motion shall stay any action in any court or authority to  
22   determine the lawfulness of the surveillance. In determin-  
23   ing the lawfulness of the surveillance, the Special Court  
24   shall, notwithstanding any other law, if the Attorney Gen-  
25   eral files an affidavit under oath with the Special Court

1 *that disclosure would harm the national security of the United*  
2 *States or compromise foreign intelligence sources and methods,*  
3 *review in camera the application, order, and such other*  
4 *materials relating to the surveillance as may be necessary*  
5 *to determine whether the surveillance of the aggrieved person*  
6 *was lawfully authorized and conducted. In making this de-*  
7 *termination, the Special Court may disclose to the aggrieved*  
8 *person, under appropriate security procedures and protective*  
9 *orders, portions of the application, order, or other mate-*  
10 *rials if there is a reasonable question as to the legality of*  
11 *the surveillance and if disclosure would likely promote a*  
12 *more accurate determination of such legality, or if such dis-*  
13 *closure would not harm the national security.*

14 *(g) Except as provided in subsection (f), whenever any*  
15 *motion or request is made pursuant to any statute or rule*  
16 *of the United States or any State before any court or other*  
17 *authority of the United States or any State to discover or*  
18 *obtain applications or orders or other materials relating*  
19 *to surveillance pursuant to the authority of this title or to*  
20 *discover, obtain, or suppress any information obtained from*  
21 *electronic surveillance pursuant to the authority of this title,*  
22 *and the court or other authority determines that the moving*  
23 *party is an aggrieved person, if the Attorney General files*  
24 *with the Special Court of Appeals an affidavit under oath*  
25 *than an adversary hearing would harm the national security*

1 *or compromise foreign intelligence sources and methods and*  
2 *that no information obtained or derived from an electronic*  
3 *surveillance pursuant to the authority of this title has been or*  
4 *is about to be used by the Government in the case before the*  
5 *court or other authority, the Special Court of Appeals shall,*  
6 *notwithstanding any other law, stay the proceeding before*  
7 *the other court or authority and review in camera and ex*  
8 *parte the application, order, and such other materials as*  
9 *may be necessary to determine whether the surveillance of the*  
10 *aggrieved person was lawfully authorized and conducted.*  
11 *In making this determination, the Special Court of Appeals*  
12 *shall disclose, under appropriate security procedures and*  
13 *protective orders, to the aggrieved person or his attorney*  
14 *portions of the application, order, or other materials relating*  
15 *to the surveillance only if necessary to afford due process to*  
16 *the aggrieved person.*

17 *(h) If the Special Court pursuant to subsection (f) or*  
18 *the Special Court of Appeals pursuant to subsection (g)*  
19 *determines the surveillance was not lawfully authorized and*  
20 *conducted, it shall, in accordance with the requirements of*  
21 *the law, suppress the evidence which was unlawfully obtained*  
22 *or derived from electronic surveillance of the aggrieved per-*  
23 *son or otherwise grant the motion of the aggrieved person. If*  
24 *the Special Court pursuant to subsection (f) or the Special*  
25 *Court of Appeals pursuant to subsection (g) determines the*

1 *surveillance was lawfully authorized and conducted, it shall*  
2 *deny the motion of the aggrieved person except to the extent*  
3 *that due process requires discovery or disclosure.*

4 *(i) Orders granting or denying motions or requests*  
5 *under subsection (h), decisions under this section as to the*  
6 *lawfulness of electronic surveillance, and, absent a finding*  
7 *of unlawfulness, orders of the Special Court or Special Court*  
8 *of Appeals granting or denying disclosure of applications,*  
9 *orders, or other materials relating to a surveillance shall be*  
10 *final orders and binding upon all courts of the United States*  
11 *and the several States except the Special Court of Appeals*  
12 *and the Supreme Court.*

13 *(j) In circumstances involving the unintentional acquisi-*  
14 *tion by an electronic, mechanical, or other surveillance device*  
15 *of the contents of any radio communication, under circum-*  
16 *stances in which a person has a reasonable expectation of*  
17 *privacy and a warrant would be required for law enforce-*  
18 *ment purposes, and if both the sender and all intended recipi-*  
19 *ents are located within the United States, such contents shall*  
20 *be destroyed upon recognition, unless the Attorney General*  
21 *determines that the contents may indicate a threat of death*  
22 *or serious bodily harm to any person.*

23 *(k) If an emergency employment of electronic surveil-*  
24 *lance is authorized under section 105(e) and a subsequent*  
25 *order approving the surveillance is not obtained, the judge*

1 *shall cause to be served on any United States person named*  
2 *in the application and on such other United States persons*  
3 *subject to electronic surveillance as the judge may determine*  
4 *in his discretion it is in the interest of justice to serve, notice*  
5 *of—*

6 *(1) the fact of the application;*

7 *(2) the period of the surveillance; and*

8 *(3) the fact that during the period information was*  
9 *or was not obtained.*

10 *On an ex parte showing of good cause to the judge the serv-*  
11 *ing of the notice required by this subsection may be postponed*  
12 *or suspended for a period not to exceed ninety days. There-*  
13 *after, on a further ex parte showing of good cause, the court*  
14 *shall forego ordering the serving of the notice required under*  
15 *this subsection.*

16 *REPORT OF ELECTRONIC SURVEILLANCE*

17 *SEC. 107. In April of each year, the Attorney General*  
18 *shall transmit to the Administrative Office of the United*  
19 *States Courts and to Congress a report setting forth with*  
20 *respect to the preceding calendar year—*

21 *(a) the total number of applications made for orders*  
22 *and extensions of orders approving electronic surveil-*  
23 *lance under this title; and*

24 *(b) the total number of such orders and extensions*  
25 *either granted, modified, or denied.*

1                   CONGRESSIONAL OVERSIGHT

2       *SEC. 108. On a semiannual basis the Attorney General*  
3 *shall fully inform the House Permanent Select Committee on*  
4 *Intelligence and the Senate Select Committee on Intelligence*  
5 *concerning all electronic surveillance under this title. Nothing*  
6 *in this title shall be deemed to limit the authority and respon-*  
7 *sibility of those committees to obtain such additional infor-*  
8 *mation as they may need to carry out their respective functions*  
9 *and duties.*

10                   PENALTIES

11       *SEC. 109. (a) OFFENSE.—A person is guilty of an*  
12 *offense if he intentionally—*

13               *(1) engages in electronic surveillance under color of*  
14 *law except as authorized by statute; or*

15               *(2) violates section 102(a)(2), 105(e), 105(f),*  
16 *105(g), 106(a), 106(b), or 106(j) or any court order*  
17 *issued pursuant to this title, knowing his conduct violates*  
18 *such an order or this title.*

19       *(b) DEFENSE.—(1) It is a defense to a prosecution*  
20 *under subsection (a)(1) that the defendant was a law en-*  
21 *forcement or investigative officer engaged in the course of*  
22 *his official duties and the electronic surveillance was author-*  
23 *ized by and conducted pursuant to a search warrant or court*  
24 *order of a court of competent jurisdiction.*

25       *(2) It is a defense to a prosecution under subsection*

1 (a)(2) that the defendant acted in a good faith belief that  
2 his actions did not violate any provision of this title or any  
3 court order issued pursuant to this title, under circum-  
4 stances where that belief was reasonable.

5 (c) *PENALTY*.—An offense described in this section is  
6 punishable by a fine of not more than \$10,000 or imprison-  
7 ment for not more than five years, or both.

8 (d) *JURISDICTION*.—There is Federal jurisdiction over  
9 an offense under this section if the person committing the  
10 offense was an officer or employee of the United States at the  
11 time the offense was committed.

12 *CIVIL LIABILITY*

13 *SEC. 110. CIVIL ACTION*.—An aggrieved person, other  
14 than a foreign power or an agent of a foreign power, as  
15 defined in section 101 (a) or (b)(1)(A), respectively, who  
16 has been subjected to an electronic surveillance or whose com-  
17 munication has been disseminated or used in violation of  
18 section 109 shall have a cause of action against any person  
19 who committed such violation and shall be entitled to recover—

20 (a) actual damages, but not less than liquidated  
21 damages of \$1,000 or \$100 per day for each day of  
22 violation, whichever is greater;

23 (b) punitive damages; and

24 (c) reasonable attorney's fees and other investiga-  
25 tion and litigation costs reasonably incurred.



1        *TITLE II—CONFORMING AMENDMENTS*

2        *AMENDMENTS TO CHAPTER 119 OF TITLE 18, UNITED*

3                                *STATES CODE*

4        *SEC. 201. Chapter 119 of title 18, United States Code,*  
5        *is amended as follows:*

6                *(a) Section 2511(2)(a)(ii) is amended to read*  
7        *as follows:*

8        *“(ii) Notwithstanding any other law, communication*  
9        *common carriers, their officers, employees, and agents, land-*  
10       *lords, custodians, or other persons, are authorized to provide*  
11       *information, facilities, or technical assistance to persons au-*  
12       *thorized by law to intercept wire or oral communications*  
13       *or to conduct electronic surveillance, as defined in section*  
14       *101 of the Foreign Intelligence Surveillance Act of 1978,*  
15       *if the common carrier, its officers, employees, or agents, land-*  
16       *lord, custodian, or other specified person, has been provided*  
17       *with—*

18                *“(A) a court order directing such assistance signed*  
19        *by the authorizing judge, or*

20                *“(B) a certification in writing by a person speci-*  
21        *fied in section 2518(7) of this title or the Attorney*  
22        *General of the United States that no warrant or court*  
23        *order is required by law, that all statutory requirements*  
24        *have been met, and that the specified assistance is*  
25        *required,*

1 *setting forth the period of time during which the provision*  
2 *of the information, facilities, or technical assistance is author-*  
3 *ized and specifying the information, facilities, or technical*  
4 *assistance required. No communication common carrier,*  
5 *officer, employee, or agent thereof, or landlord, custodian, or*  
6 *other specified person shall disclose the existence of any*  
7 *interception or surveillance or the device used to accomplish*  
8 *the interception or surveillance with respect to which the*  
9 *person has been furnished an order or certification under this*  
10 *subparagraph, except as may otherwise be required by legal*  
11 *process and then only after prior notification to the Attorney*  
12 *General or to the principal prosecuting attorney of a State*  
13 *or any political subdivision of a State, as may be appropriate.*  
14 *No cause of action shall lie in any court against any com-*  
15 *munication common carrier, its officers, employees, or agents,*  
16 *landlord, custodian, or other specified person for providing*  
17 *information, facilities, or assistance in accordance with the*  
18 *terms of an order or certification under this subparagraph.”.*

19 *(b) Section 2511(2) is amended by adding at the*  
20 *end thereof the following new provisions:*

21 *“(e) Notwithstanding any other provision of this title*  
22 *or section 605 or 606 of the Communications Act of 1934,*  
23 *it shall not be unlawful for an officer, employee, or agent of*  
24 *the United States in the normal course of his official duty to*  
25 *conduct electronic surveillance, as defined in section 101 of*

1 *the Foreign Intelligence Surveillance Act of 1978, as*  
2 *authorized by that Act.*

3       “(f) *Nothing contained in this chapter, or section 605*  
4 *of the Communications Act of 1934, shall be deemed to*  
5 *affect the acquisition by the United States Government of*  
6 *foreign intelligence information from international or for-*  
7 *ign communications by a means other than electronic sur-*  
8 *veillance as defined in section 101 of the Foreign Intelligence*  
9 *Surveillance Act of 1978, and procedures in this chapter*  
10 *and the Foreign Intelligence Surveillance Act of 1978 shall*  
11 *be the exclusive means by which electronic surveillance, as*  
12 *defined in section 101 of such Act, and the interception of*  
13 *domestic wire and oral communications may be conducted.”.*

14       (c) *Section 2511(3) is repealed.*

15       (d) *Section 2518(1) is amended by inserting “un-*  
16 *der this chapter” after “communication”.*

17       (e) *Section 2518(4) is amended by inserting “under*  
18 *this chapter” after both appearances of “wire or oral*  
19 *communication”.*

20       (f) *Section 2518(9) is amended by striking out*  
21 *“intercepted” and inserting “intercepted pursuant to*  
22 *this chapter” after “communication”.*

23       (g) *Section 2518(10) is amended by striking out*  
24 *“intercepted” and inserting “intercepted pursuant to this*  
25 *chapter” after the first appearance of “communicaiton”.*

1           (h) Section 2519(3) is amended by inserting "pur-  
2           suant to this chapter" after "wire or oral communica-  
3           tions" and after "granted or denied".

4                   *TITLE III—EFFECTIVE DATE*

5                           *EFFECTIVE DATE*

6           *SEC. 301. The provisions of this Act and the amend-*  
7           *ments made hereby shall become effective upon the date of*  
8           *enactment of this Act, except that any electronic surveillance*  
9           *approved by the Attorney General to gather foreign intelli-*  
10          *gence information shall not be deemed unlawful for failure*  
11          *to follow the procedures of this Act, if that surveillance is*  
12          *terminated or an order approving that surveillance is*  
13          *obtained under title I of this Act within ninety days follow-*  
14          *ing the designation of the chief judges pursuant to section*  
15          *103 of this Act.*

          Amend the title so as to read: "A bill to authorize elec-  
          tronic surveillance to obtain foreign intelligence informa-  
          tion."

95TH CONGRESS  
2D SESSION

**H. R. 7308**

[Report No. 95-1283, Part I]

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## **A BILL**

To amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information.

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By Mr. RODINO

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MAY 18, 1977

Referred to the Committee on the Judiciary

NOVEMBER 4, 1977

Rereferred jointly to the Committee on the Judiciary and the Permanent Select Committee on Intelligence

JUNE 8, 1978

Reported from the Permanent Select Committee on Intelligence with amendments, and ordered to be printed